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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Petitions of BellSouth, SBC and)
Bell Atlantic for Forbearance)
from Section 272 Requirements in)
Connection with National Directory)
Assistance Services)

CC Docket No. 97-172
DA 99-2556

COMMENTS OF AT&T CORP.

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SUMMARY

Both the Commission's prior rulings regarding BOC NDA services and the instant Petitions make clear that the national directory assistance ("NDA") services offered by Bell Atlantic, BellSouth and SBC have been in violation of the Communications Act since their inception. By their own admission, Bell Atlantic's and SBC's NDA offerings currently violate § 271's prohibition on providing in-region interLATA services, because they utilize information storage facilities owned by third parties; while BellSouth coyly refuses to state whether it operates its NDA in a manner that complies with § 271. The Petitions further make plain that all three RBOCs' NDA services are operating in violation of, *inter alia*, § 272's separation, transaction disclosure, and nondiscrimination requirements. In addition to being liable for damages claims filed by their competitors, Bell Atlantic, BellSouth and SBC should face substantial Commission fines and forfeitures for these longstanding violations. The Petitioners' conduct is not only unlawful, it is open, willful, and knowing, and should be met with significant penalties.

The plain language of the Communications Act prohibits the Commission from forbearing from the requirements of § 271. Accordingly, forbearance is impossible as to those portions of the Petitioners' NDA services that do not comply with that section. At minimum, the Commission cannot forbear as to those noncompliant aspects of Petitioners' services unless and until Petitioners make a further showing, subject to public comment, that they have brought them into compliance with § 271.

Even to the extent that forbearance is potentially available, the Petitions are inadequate to support relief under § 10. As the Commission has recognized, "a decision to forbear must be based upon a record that contains more than broad, unsupported allegations." The current record simply provides no basis on which the Commission could find that Bell Atlantic, SBC or BellSouth will provide (or currently provide) nondiscriminatory access to the directory assistance data that the NDA Order found is essential to permit other NDA providers to compete with BOC monopolists. Accordingly, the Commission cannot reasonably find that Petitioners will comply with § 272(c)(1) if forbearance is granted, and the Petition thus cannot satisfy the requirements of §§ 10(a)(1) and (a)(2) that forbearance must ensure the protection of both consumers and competition.

The Petitions also fail the "public interest" criterion of § 10(a)(3). The paramount measure of the "public interest" under the Communications Act is the law as enacted by Congress. Petitioners' strategy of willful, knowing and ongoing refusals to comply with the Act's requirements make it impossible for the Commission reasonably to find that forbearance is appropriate in this case.

Finally, the Petitions are insufficient to allow the Commission to find that forbearance is legally permissible as to those components of Petitioners' NDA services that purportedly are (or eventually may be) "incidental interLATA services." The NDA Order ruled that forbearance could be granted to NDA offerings only to the extent that they are incidental interLATA services. Bell Atlantic's bare statement that it has "purchased" one of the two databases it uses for NDA is insufficient to establish whether the requirements of § 271(g)(4) are met as to the portion of its NDA service that relies on

this "purchased" facility. Bell Atlantic must disclose the precise terms of its agreements with Nortel. In the absence of such a showing, the Commission cannot confirm whether forbearance is even potentially available as to this portion of Bell Atlantic's NDA, much less whether the Petition meets the § 10 criteria. Similarly, both BellSouth and SBC must provide detailed information concerning the terms on which they may eventually purchase the information storage facilities used by their NDA services. This information should be provided as an element of the further showing those RBOCs must make in order to obtain forbearance after they claim to have brought their NDA services into compliance with § 271, and should be subject to public comment.

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COMMENTS OF AT&T CORP.

Pursuant to Section 1.1 of the Commission's Rules, 47 C.F.R. § 1.1, and the Public Notice released November 17, 1999, AT&T Corp. ("AT&T") hereby submits its comments concerning the petitions for forbearance ("Petitions") filed by BellSouth Corporation ("BellSouth"), SBC Communications Inc. ("SBC"), and Bell Atlantic (collectively, "Petitioners") from the separation requirements of § 272 for national directory assistance ("NDA") services offered by certain of their BOC subsidiaries.

It is obvious from the Petitions that all of Petitioners' NDA services have long been in violation of the Communications Act. Moreover, Bell Atlantic and SBC openly admit that they are today offering NDA in violation of § 271; while BellSouth provides no assurance that its NDA service does not also violate that section. Because the Act expressly provides that the Commission cannot forbear from enforcing the requirements of § 271, the Petitions must be denied as to those portions of the Petitioners' services that violate that section. As to those components of Petitioners' services that may potentially be "incidental interLATA services"

pursuant to § 271(g)(4), the Petitions fail to provide an adequate basis for forbearance, and should be denied on that ground. At a minimum, the Commission should require BellSouth, SBC and Bell Atlantic to make a supplemental showing in support of their requests for relief, with such further submission subject to public comment.

I. THE *NDA ORDER*

The Commission's recent NDA Order¹ addressed U S West's NDA service. That order ruled unequivocally that NDA is an in-region interLATA service, and that it is subject to the separation and nondiscrimination requirements of § 272.² The NDA Order further held that, although NDA can in some cases be an "incidental interLATA service," the component of U S West's NDA service that provides out-of-region information does not fall into that category, because U S West does not own the facilities that it uses to store out-of-region directory assistance data.³ Accordingly, U S West could not lawfully provide that portion of the service prior to obtaining in-region interLATA authority pursuant to § 271.

As the Commission has recognized, it lacks authority to forbear from the requirements of § 271, including the § 272 obligations incorporated by § 271(d)(3)(B).⁴ The

¹ Memorandum Opinion and Order, Petition of U S WEST Communications, Inc. for a Declaratory Ruling Regarding the Provision of National Directory Assistance, CC Docket Nos. 97-172, 92-105 (released September 27, 1999) ("NDA Order").

² NDA Order, ¶¶ 18, 28.

³ See id., ¶¶ 23-24; 47 U.S.C. § 271(g)(4).

⁴ See NDA Order, ¶ 28; Memorandum Opinion and Order, Petitions For Forbearance From The Application Of Section 272 Of The Communications Act Of 1934, As Amended, To Certain Activities, CC Docket No. 96-149, DA 98-220, ¶ 22 (released February 6, 1998) ("E911 Forbearance Order") ("[P]rior to their full implementation we lack authority to

(footnote continued on next page)

Commission has ruled, however, that it may forbear from the application of § 272 to the incidental interLATA services described in § 271(g).⁵ Accordingly, the NDA Order granted U S West forbearance from some of § 272's requirements⁶ for the portion of its NDA service that is an incidental interLATA service under § 271(g)(4).

The Commission held that it could not forbear from § 272(c)'s broad nondiscrimination provisions because of "[t]he competitive advantages U S WEST enjoys with respect to the provision of directory assistance service throughout its region" due to "its dominant position in the local exchange and exchange access markets."⁷ The NDA Order found that U S West had not provided unaffiliated entities with "access to the in-region telephone numbers it uses to provide [NDA] at the same rates, terms, and conditions it imputes to itself," and that the rates U S West did charge "have the potential to adversely affect competition" in the market for NDA services.⁸ Further, the Commission affirmed that directory information available from

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forbear from application of the requirements of section 272 to any service for which the BOC must obtain prior authorization under section 271(d)(3).").

⁵ See E911 Forbearance Order, ¶ 65 ("[W]e have authority to forbear from the application of section 272 to BOC provision of ... the incidental activities described in section 271(g) of that Act.").

⁶ The Commission did not forbear from the nondiscrimination requirements of § 272(c). E.g., NDA Order, ¶ 3.

⁷ NDA Order, ¶ 35.

⁸ Id., ¶¶ 34, 35.

other sources is less complete, accurate, and reliable than that U S West obtains in its role as incumbent local exchange monopolist in its territory.⁹

In light of U S West's unique access to directory assistance data in its region, the NDA Order stressed that the statutory requirements for forbearance would be met only if the Commission retained § 272(c)'s nondiscrimination requirements.¹⁰ The Commission therefore required U S West to make available to unaffiliated entities all of the in-region directory listing information it uses to provide NDA on the same rates, terms, and conditions it imputes to itself, and to update and maintain the directory listing information it provides to unaffiliated entities in the same manner it updates and maintains those listings for its own NDA service.¹¹

⁹ Id., ¶ 35. Some BOCs have attempted to argue that the Commission's decision to remove directory assistance from the list of available unbundled network elements demonstrates that ILECs (and BOCs in particular) do not have unique access to directory data. To the contrary, the Commission has repeatedly found that other sources of such data are inherently inferior. See, e.g., Third Report and Order, Implementation of the Telecommunications Act of 1996, CC Docket No. 96-115, FCC 99-227, ¶¶ 87, 88 (released September 9, 1999); E911 Forbearance Order, ¶ 76. Indeed, the UNE Remand Order repeatedly makes clear that, although directory assistance services are no longer in all cases a UNE, the Commission relies on the availability of directory assistance data on nondiscriminatory terms under 47 U.S.C. § 251(b)(3) to ensure that meaningful directory assistance competition is possible. See, e.g., Third Report and Order, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 99-238, ¶¶ 457, 464 (released November 5, 1999).

¹⁰ See, e.g., NDA Order, ¶¶ 36, 47.

¹¹ Id., ¶ 37.

II. THE COMMISSION SHOULD CONSIDER WHETHER PETITIONERS SHOULD BE SANCTIONED FOR THEIR ONGOING VIOLATIONS OF THE COMMUNICATIONS ACT

Both the Commission's rulings regarding BOC NDA services and the Petitions themselves make clear that the Petitioners' NDA offerings have been in violation of the Communications Act since those services' inception.¹² As a preliminary matter, all of the Petitioners' NDA services are in clear violation of multiple provisions of § 272, including that section's separation, transaction disclosure, and nondiscrimination requirements.

By its own admission, Bell Atlantic's NDA is currently violating § 271's prohibition on providing in-region interLATA services, because Bell Atlantic does not own the databases that it uses for that service.¹³ Similarly, SBC admits that it does not own the databases used for many of its NDA queries.¹⁴ BellSouth's petition takes a far more coy approach to this issue, never confirming that its current NDA service violates § 271, but carefully phrasing all of

¹² BellSouth has offered NDA since 1997. See BellSouth 411 Nationwide Service Opens Office in Greenville, July 13, 1999 (BellSouth press release) <http://www.bellsouthcorp.com/proactive/documents/render/27744.vtml>. SBC has offered NDA since at least 1998. See Southwestern Bell Introduces Nationwide Listing Service, August 5, 1998 (SBC press release), available at <http://www.swbell.com>. Bell Atlantic has provided NDA in the portion of its territory covered by the instant Petition since at least March 1999, and provided that service prior to that time elsewhere in its territory. See Bell Atlantic Launches 'National 411' in Virginia, March 1, 1999 (Bell Atlantic press release), <http://www.ba.com/nr/1999/Mar/19990301001.html>; Bell Atlantic Launches 'National 411' in New York, February 2, 1999 (Bell Atlantic press release) <http://www.ba.com/nr/1999/Feb/19990202003.html>.

¹³ See Bell Atlantic Petition, p. 2 (stating that Bell Atlantic owns only one of two databases it uses for out-of-region information for its NDA services).

¹⁴ See SBC Petition, p. 3 (stating that Southwestern Bell and Pacific Bell use a database owned by Nortel for out-of-region listings).

its pledges to comply with that section's requirements only in the future tense. Thus, BellSouth states only that it "will offer nonlocal directory listing information through a service architecture that" complies with § 271(g)(4).¹⁵ BellSouth's refusal to reveal the architecture it currently employs for its NDA strongly suggests that that service, like the other Petitioners' offerings, violates § 271.¹⁶

In addition to being liable for damages claims filed by its competitors,¹⁷ the Petitioners should face substantial Commission fines and forfeitures for these longstanding violations. Petitioners' conduct is not only unlawful, it is open, willful, and knowing, and should be met with significant penalties.

The Commission adopted the NDA Order and issued a press release describing its ruling on June 9, 1999, literally months before any of the instant Petitions were filed. That release made clear that NDA is an interLATA service, and that even the component of U S West's NDA for which the Commission granted forbearance remained subject to § 272(c)'s

¹⁵ BellSouth Petition, p. 4; see also id., pp. 5, 6 (stating that BellSouth "will" ensure that its NDA uses databases owned by BellSouth, and that its NDA service "will be made to conform" with § 271(g)(4)) (emphasis added).

¹⁶ BellSouth should also reveal whether it has in the past used an NDA architecture that fails to comply with § 271(g)(4), as it can and should be held liable for those past violations in addition to any current ones.

¹⁷ See MCI Telecommunications Corp. v. U S West Communications, Inc., File Nos. E-97-40 & E-97-19, DA 99-2479, ¶¶ 17, 19 (released November 8, 1999) (holding U S West and Ameritech liable for damages from the inception of their NDA services for operating in violation of §§ 272 & 271).

nondiscrimination requirements.¹⁸ The NDA Order was released on September 27, 1999. The order expressly "emphasize[d] that our decision to forbear in the instant proceeding is limited exclusively to U S West's provision of regionwide directory assistance service."¹⁹ Petitioners' thus had unequivocal notice that its NDA service was subject to § 272.²⁰ Indeed, the instant Petitions amount to an admission that Petitioners' NDA services are currently (and long have been) unlawful.

In addition to their obvious failure to comply with, *inter alia*, the separation and transaction disclosure requirements of § 272, the Petitions suggest that BellSouth, SBC and Bell Atlantic do not intend to comply with the nondiscrimination requirements of § 272(c) until such time as their Petitions may be granted. Bell Atlantic blandly states, carefully using the future tense, that it "will offer" access to listing information and otherwise "will comply" with the

¹⁸ FCC Grants U S West Significant Regulatory Relief To Provide Nonlocal Directory Assistance Service, Report No. 99-19, CC Docket Nos. 97-172, 92-105, released June 9, 1999.

¹⁹ NDA Order, ¶ 54.

²⁰ In addition, when Bell Atlantic filed its recent New York § 271 petition -- after the NDA Order's release -- it failed to make any mention of the fact that its NDA service was openly noncompliant with both §§ 271 and 272. Bell Atlantic did not seek forbearance until after AT&T's opposition to the New York § 271 application revealed that Bell Atlantic's NDA was flouting the Act's requirements.

Bell Atlantic has elsewhere asserted that "the best indicator of future performance is actual experience to date." Reply Comments of Bell Atlantic, Application by New York Telephone Company (d/b/a Bell Atlantic- New York), Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Bell Atlantic Global Networks, Inc., for Authorization to Provide In-Region InterLATA Services in New York, CC Docket No. 99-295, p. 16 (filed November 8, 1999). The sorry record of Communications Act violations accumulated by Bell Atlantic's NDA service makes plain that Bell Atlantic flunks its own test as to §§ 271 and 272.

nondiscrimination requirements imposed in the NDA Order.²¹ BellSouth candidly phrases its commitments in conditional terms, explaining that "if the Commission grants forbearance with respect to its nonlocal directory assistance, [BellSouth] will abide by this condition as well," and that it "agrees to meet this condition, if forbearance is granted."²² SBC's Petition simply ignores the question of nondiscriminatory access altogether, neither claiming that it currently complies with § 272(c) nor committing to do so in the future.

The Petitions' offer of (at most) generalized promises to permit, at some undefined future time, nondiscriminatory access to Petitioners' directory assistance data simply ignores the fact that § 272(c) requires this conduct from Petitioners today.²³ Moreover, it is clear that a future forbearance grant can in no way affect Petitioners' current obligations. The Commission cannot grant forbearance for past conduct, because to do so would constitute impermissible retroactive rulemaking.²⁴ Thus, the Common Carrier Bureau recently ruled that U S West was liable for damages for its violations of §§ 271 and 272 "from the inception of its nonlocal

²¹ Bell Atlantic Petition, p. 4.

²² BellSouth Petition, pp. 8, 9 (emphasis added).

²³ Petitioners should not be heard to argue that they have not violated § 272(c) because that section requires only nondiscrimination between a BOC and its separate affiliate, and that they have not placed its NDA operations in such an affiliate. The failure to utilize an affiliate for NDA is, of course, a direct violation of a separate requirement under the Act. Such an argument would be analogous to the defense proffered by the proverbial defendant who, charged with killing both his parents, sought leniency on the grounds that he was an orphan.

²⁴ See, e.g., Bowen v. Georgetown Hosp., 488 U.S. 204 (1988).

directory assistance service until the date upon which the Commission's forbearance in the *NDA Order* became effective."²⁵

Having now offered NDA for months or years in violation of the Act and in a manner that takes improper advantage of their monopoly power, Petitioners must not be permitted simply to continue those violations while the Commission considers their Petitions. The Commission should, at minimum, order each of the Petitioners to show cause why their past and continuing violations should not be the subject of immediate enforcement proceedings.

III. THE PETITIONS FAIL TO SATISFY THE STATUTORY REQUIREMENTS FOR FORBEARANCE

A. The Commission Cannot Forbear As To Petitioners' Ongoing Violations Of § 271.

As shown above, Bell Atlantic and SBC openly admit that their NDA services violate § 271, while BellSouth's Petition gives the Commission every reason to believe that its service violates that section as well. The plain language of the Communications Act prohibits the Commission from forbearing from the requirements of § 271, as the Commission has repeatedly recognized.²⁶ The record before the Commission makes clear that forbearance is

²⁵ MCI v. U S West, ¶ 19. Petitioners also must not be heard to argue that their past conduct is excused by the fact that the law regarding its NDA service was somehow unsettled prior to the release of the NDA Order. As the decision in MCI v. U S West (as well as black-letter law) makes clear, that claim is no defense. In all events, Petitioners' ongoing failure to comply with §§ 272(c) and 271 cannot be excused by a purported lack of understanding of their legal obligations following release of NDA Order.

²⁶ 47 U.S.C. § 160(d) ("Except as provided in section 251(f), the Commission may not forbear from applying the requirements of section 251(c) or 271 under subsection (a) of this section until it determines that those requirements have been fully implemented."); see also infra, n.4.

impossible, at least as to those portions of the Petitioners' NDA services that do not comply with § 271. At minimum, the Commission cannot forbear as to those noncompliant aspects of Petitioners' services unless and until Petitioners make a further showing, subject to public comment, that they have brought them into compliance with that section.

B. The Petitions Fail To Satisfy The Requirements Of §§ 10(a)(1) And (a)(2).

Sections 10(a)(1) and (a)(2) require that in order to forbear, the Commission must find that enforcement of a statutory provision "is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory" and "is not necessary for the protection of consumers."²⁷ As shown above, the NDA Order concluded that these criteria were satisfied in the case of forbearance from § 272 for NDA services only with "retention of the nondiscrimination requirements found in section 272(c)(1)."²⁸

Petitioners have not shown that they currently comply with the nondiscrimination requirements of § 272(c); indeed, they have not even committed to comply with those requirements prior to the time that they may obtain forbearance. Moreover, the Petitions fail to provide any information or explanation of any kind as to how Petitioners intend to comply with

²⁷ 47 U.S.C. §§ 160(a)(1), (a)(2).

²⁸ NDA Order, ¶ 36; see also id., ¶ 47.

§ 272(c), when they intend to do so, or how they will enable either the Commission or unaffiliated entities to verify that they are doing so.²⁹

The E911 Forbearance Order held that "a decision to forbear must be based upon a record that contains more than broad, unsupported allegations of why those criteria are met."³⁰ The current record simply provides no basis on which the Commission could find that Petitioners will provide (or currently provide) nondiscriminatory access to the directory assistance data that the NDA Order found is a prerequisite to adequate NDA competition.³¹ The Commission simply has no information as to how (or whether) Petitioners will permit -- or currently permit -- competitors to obtain directory assistance data on nondiscriminatory terms. Accordingly, the Commission has no basis upon which to find that Petitioners will comply with § 272(c)(1) if forbearance is granted.³²

²⁹ In the absence of transaction disclosure requirements such as those in § 272(b)(5), neither the Commission nor third parties will have any means to verify Petitioners' compliance with § 272(c)(1).

³⁰ E911 Forbearance Order, ¶ 16.

³¹ Although Bell Atlantic's Petition states in passing (p. 4) that "[n]ationwide telephone listings are also available from CD-ROM providers, Internet service providers" and other sources, the NDA Order expressly found that U S West failed to show "that any of these alternative sources of nonlocal directory assistance service offer directory listing information that is as up-to-date as the information provided by U S WEST." NDA Order, ¶ 35. Similarly, although SBC alleges (p. 6) that competition for NDA services is "fierce," it wholly ignores the NDA Order's ruling that nondiscriminatory access to directory assistance data is required in order to meet § 10's requirements.

³² While U S West could potentially (if implausibly) argue at the time it sought forbearance that it did not understand that § 272(c) was applicable to its NDA services, the Petitioners have the benefit of the NDA Order and other Commission guidance. Petitioners thus should not be heard to complain that it is somehow unreasonable to require that they

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C. The Petitions Fail To Satisfy The Requirements Of § 10(a)(3).

Section 10(a)(3) requires the Commission to find that "forbearance from applying [a] provision or regulation is consistent with the public interest."³³ The instant Petitions cannot satisfy this statutory criterion in light of Petitioners' longstanding (and ongoing) refusal to comply with the Act's requirements. The paramount measure of "the public interest" under the Act is the law as enacted by Congress. The Commission should not -- and lawfully cannot -- condone Petitioners' strategy of willful, knowing and ongoing refusals to comply with the requirements the Act imposes on their NDA services.

D. The Petitions Do Not Permit A Finding That Petitioners' NDA Services Are Incidental InterLATA Services.

As described above, the Commission has repeatedly recognized that it cannot forbear from applying § 272 to any interLATA service that a BOC is prohibited from providing prior to obtaining in-region interLATA relief. The NDA Order makes clear that a BOC may not provide NDA before it obtains § 271 authority unless that service is configured in such a way that it is an incidental interLATA service pursuant to § 271(g)(4).

The NDA Order observed that the out-of-region component of U S West's NDA was not an incidental interLATA service because it utilized a database owned by Nortel. However, the Commission "emphasized that our determination that U S West's nationwide

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demonstrate that they currently comply with § 272(c) before the Commission will forbear from the other Congressionally-mandated provisions of § 272(c).

³³ 47 U.S.C. § 160(a)(3).

directory assistance service does not satisfy the requirements of section 271(g)(4) is limited to the facts presented in the instant proceeding."³⁴ The Commission did not speculate on the circumstances that might lead it to conclude that U S West's NDA satisfied § 271(g)(4), and expressly reserved judgment as to how it might rule if U S West owned the database of out-of-region numbers used by its NDA service.³⁵

Bell Atlantic's Petition addresses this aspect of the NDA Order in a single sentence, observing that one of the two information storage facilities utilized by its NDA service "was purchased from Nortel," while the other remains in Nortel's hands.³⁶ As shown above, to the extent Bell Atlantic's NDA uses a database owned by a third party, it violates § 271 (as well as § 272) and forbearance is not available pursuant to the plain language of § 10. Moreover, Bell Atlantic's Petition is inadequate to establish that Bell Atlantic's NDA will be an incidental interLATA service when Bell Atlantic eventually completes its efforts to direct all of its NDA queries to the database that it asserts it has purchased from Nortel.

Bell Atlantic's bare statement that it has "purchased" one of the databases it uses for its NDA offering does not permit the Commission to determine whether its NDA service

³⁴ NDA Order, ¶ 24 (emphasis added).

³⁵ See id., ¶ 24 n.67 ("If U S West, rather than Nortel, owned the information storage facility containing the out-of-region directory listings, our conclusion may be different.") (emphasis added). The Commission noted (¶ 28) that "if U S WEST was providing the nationwide component of its nonlocal directory assistance service in compliance with section 271(g)(4), the forbearance analysis set forth herein would apply to its provision of that service as well." That statement, however, does not indicate what steps U S West would have to take in order to offer NDA "in compliance with section 271(g)(4)."

³⁶ Bell Atlantic Petition, p. 2.

meets the requirements of § 271(g)(4) to the extent it uses the "purchased" facilities. Bell Atlantic must disclose the precise terms of its agreements with Nortel in order to permit both the Commission and commenters to evaluate whether those arrangements are sufficient to render Bell Atlantic's NDA an "incidental interLATA service."³⁷ For example, Bell Atlantic must show whether the transaction confers discriminatory advantages on Nortel, such as by permitting it preferential access to Bell Atlantic's own directory assistance data in exchange for a lower price.³⁸ Bell Atlantic also must reveal the terms of this transaction so that the Commission can determine whether it has "purchased" a sufficient interest to satisfy § 271(g)(4). As the NDA Order implicitly recognized by limiting its ruling to the facts before it, a BOC could enter into arrangements concerning NDA databases that would not permit its NDA offering to be deemed an incidental interLATA service. Indeed, BellSouth recently sought reconsideration of the NDA

³⁷ In its reply concerning its petition for forbearance for NDA in the northern half of its territory, Bell Atlantic conspicuously refused to provide any information regarding the arrangements it had entered into to purchase certain information storage facilities used for that service, or to deny that AT&T's concerns about the structure of those dealings were well-founded. See Response of Bell Atlantic, pp. 3-4, filed November 23, 1999 in Petition of Bell Atlantic for Forbearance from Section 272 Requirements in Connection with National Directory Assistance Services, CC Docket No. 97-172, DA 99-2345. If the terms of Bell Atlantic's purchases of NDA databases are unobjectionable, then it has no reason to refuse to disclose them (or at the very least to describe them). That information could, of course, potentially be provided pursuant to a protective order, if Bell Atlantic believes such protection is necessary.

³⁸ If Bell Atlantic has granted preferential access to Nortel, the NDA Order would not permit forbearance unless Bell Atlantic first undid the effects of that discrimination. Any other result would permit Bell Atlantic to gain the very advantages from its monopoly position that the NDA Order found would preclude forbearance (and which Congress prohibited in § 272(c)).

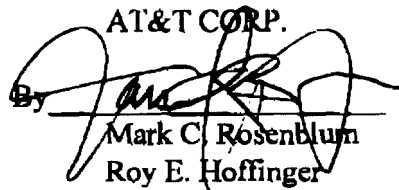
Order on the grounds that § 271(g)(4) purportedly permits a BOC to obtain a variety of lesser interests than outright ownership of a database.

For the same reasons, both BellSouth and SBC also must provide detailed information concerning the terms on which they may eventually purchase the information storage facilities used by their NDA services. This information should be provided as an element of the further showing those RBOCs must make in order to obtain forbearance after they claim to have brought their NDA services into compliance with § 271, and should be subject to public comment. The Commission cannot grant forbearance based on Petitioners' perfunctory representations that they intend, at some point in the future, to cease their longstanding violations of § 271.

CONCLUSION

For the reasons stated above, the Petitions should be denied. In the alternative, the Commission should require each of the Petitioners to make a further showing, consistent with AT&T's comments, in support of their requests for forbearance.

Respectfully submitted,

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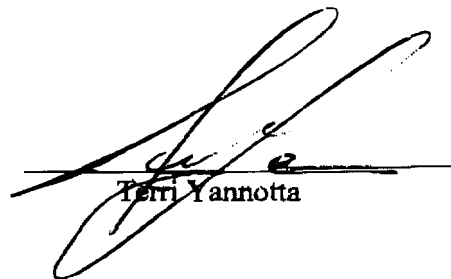
CERTIFICATE OF SERVICE

I, Terri Yannotta, do hereby certify that on this 29th day of November, 1999, a copy of the foregoing "Comments of AT&T Corp." was filed by U.S. first-class mail, postage prepaid to the parties listed below:

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